

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EAPPEALS COMMERCIAL LLC,  
a Delaware limited liability company d/b/a  
Medical Billing Resources, and  
MEDICAL BILLING RESOURCES, INC.,  
a New Jersey corporation,

Plaintiffs,

- *against* -

THE MOUNT VERNON HOSPITAL, a  
New York corporation,

Defendant.

08-CV-4406 (KMK)  
ECF Case

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**COMPLAINT**

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Plaintiffs, eAppeals Commercial LLC and Medical Billing Resources, Inc.,  
complaining of the defendant, The Mount Vernon Hospital, respectfully state and allege  
as follows:

**THE PARTIES**

1. Plaintiff eAppeals Commercial LLC (herein, “eAppeals”) is a Delaware limited liability company doing business as Medical Billing Resources, with its principal place of business at 600 Bloomfield Avenue, Bloomfield, New Jersey 07003.

2. Plaintiff Medical Billing Resources, Inc. (herein, “MBRI”) is a New Jersey corporation with its principal place of business at 89 Headquarters Plaza North, Suit 1419, Morristown, New Jersey 07960.

3. Upon information and belief, defendant Mount Vernon Hospital (herein, “MVH”) is a New York corporation with its principal place of business at 12 North 7<sup>th</sup> Avenue, Mount Vernon, New York 10550.

## JURISDICTION AND VENUE

4. This Court has jurisdiction of this civil action pursuant to 28 U.S.C. § 1332(a)(1), in that the matter in controversy exceeds the sum of \$75,000 exclusive of interest and costs, and is between citizens of different states.

5. Venue is properly laid in this judicial district, in that defendant resides in this district.

## FIRST CLAIM FOR RELIEF (Breach of Contract)

6. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 5 above, as if fully set forth herein.

7. On October 28, 2002 plaintiff MBRI entered into a contract with defendant MVH (the “MVH Agreement”), whereby MBRI agreed to provide professional billing and receivable management services to and on behalf of MVH, and MVH agreed to compensate MBRI for those services.

8. The MVH Agreement provided that plaintiff MBRI would be compensated by a contingency fee of ten percent (10%) of all collections against the receivables that it processed and managed.

9. The MVH Agreement also provided that MVH would be billed for certain costs, and for any optional services.

10. Pursuant to the MVH Agreement, MBRI rendered services from in or about May 2003 through in or about June 2006, with the agreed value of \$93,740.07 (the “MBRI Receivables”).

11. As a result of the services rendered by plaintiff MBRI to MVH under the MVH Agreement from May 2003 through June 2006, MVH actually collected

\$830,765.33, but MVH has not paid to plaintiff any portion of the agreed contingency fee or other charges owed to plaintiff under the MVH Agreement.

12. There is now due and owing to plaintiff MBRI from defendant MVH the sum of \$93,740.07.

13. Despite due demand, MVH has failed and refused to pay to plaintiff all or any portion of the amounts due.

14. By reason of the foregoing, defendant MVH has breached the MVH Agreement.

15. By reason of the foregoing breach, plaintiff MBRI has been damaged in the amount of \$93,740.07, plus interest.

SECOND CLAIM FOR RELIEF  
(Account Stated)

16. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 15 above, as if fully set forth herein.

17. Defendant MVH was duly invoiced on a monthly basis for the charges for services rendered by plaintiff MBRI from in or about May 2003 through June 2006 in the total amount of \$93,740.07.

18. Defendant MVH received and retained the numerous invoices that plaintiff MBRI mailed to it without objection to all or any of the invoices or to any part of any invoice.

19. To date, defendant MVH has not paid plaintiff MBRI all or any portion of the amounts invoiced.

20. By reason of the foregoing, an account has been duly stated and rendered, in favor of plaintiff MBRI in the amount of \$93,740.07.

THIRD CLAIM FOR RELIEF  
(*Quantum Meruit*)

21. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 20 above, as if fully set forth herein.

22. The fair and reasonable value of the services provided by plaintiff MBRI to defendant MVH under the MVH Agreement and for which payment has not been made is \$93,740.07.

23. By reason of the foregoing, plaintiff MBRI is entitled to recover from defendant MVH the amount of \$93,740.07, plus interest.

FOURTH CLAIM FOR RELIEF  
(Breach of Contract)

24. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 5 and 7 through 9 above, as if fully set forth herein.

25. Pursuant to the MVH Agreement, plaintiff MBRI rendered services from in or about July 2006 through in or about August 2007, with the agreed value of \$93,338.30.

26. On September 17, 2007 plaintiff eAppeals acquired by purchase from MBRI substantially all the assets of MBRI, including without limitation MBRI's rights under the MVH Agreement except rights with respect to the MBRI Receivables.

27. Pursuant to the MVH Agreement, plaintiff eAppeals, as successor to MBRI, rendered services to MVH from in September 2007 and October 2007 with the agreed value of \$10,307.74.

28. Pursuant to the MVH Agreement, plaintiff was also entitled to be paid ten percent (10%) of any monies collected by MVH during the 90-day period (the "tail

period”) following termination of the MVH Agreement as a result of the efforts of plaintiff under the MVH Agreement.

29. Plaintiff terminated the MVH Agreement on October 31, 2007.

30. During the tail period from in or about November 2007 through January 2008, MVH collected \$42,051.01; plaintiff’s contingent fee on those collections was \$4,205.08.

31. As a result of the services rendered to MVH under the MVH Agreement from July 2006 through October 31, 2007, and including collections during the tail period, MVH actually collected \$968,043.07, but MVH has not paid to plaintiff eAppeals any portion of the agreed contingency fee or other charges owed to plaintiff under the MVH Agreement.

32. There is now due and owing to plaintiff eAppeals from defendant MVH the sum of \$107,851.12.

33. Despite due demand, MVH has failed and refused to pay to plaintiff eAppeals all or any portion of the remaining amounts due.

34. By reason of the foregoing, defendant MVH has breached the MVH Agreement.

35. By reason of the foregoing breach, plaintiff eAppeals has been damaged in the amount of \$107,851.12, plus interest.

FIFTH CLAIM FOR RELIEF  
(Account Stated)

36. Plaintiff eAppeals repeats and realleges the allegations contained in paragraphs 1 through 35 above, as if fully set forth herein.

37. Defendant MVH was duly invoiced on a monthly basis for the charges for services rendered from in or about July 2007 through October 2007 in the total amount of \$107,851.12.

38. Defendant MVH received and retained the numerous invoices that plaintiff mailed to it without objection to all or any of the invoices or to any part of any invoice.

39. To date, defendant MVH has not paid plaintiff eAppeals all or any portion of the amounts invoiced.

40. By reason of the foregoing, an account has been duly stated and rendered, in favor of plaintiff in the amount of \$107,851.12.

SIXTH CLAIM FOR RELIEF  
(*Quantum Meruit*)

41. Plaintiff eAppeals repeats and realleges the allegations contained in paragraphs 1 through 40 above, as if fully set forth herein.

42. The fair and reasonable value of the services provided by to defendant MVH under the MVH Agreement from June 2006 through October 2007 and for which payment has not been made is \$107,851.12.

43. By reason of the foregoing, plaintiff eAppeals is entitled to recover from defendant MVH the amount of \$107,851.12, plus interest.

WHEREFORE, plaintiffs demands judgment against the defendant, The Mount Vernon Hospital, as follows

i. On the First Cause of Action in favor of plaintiff Medical Billing Resources, Inc. in the amount of \$93,740.07, together with interest at the legal rate accruing from the dates of the respective invoices;

ii. On the Second Cause of Action in favor of plaintiff Medical Billing Resources, Inc. in the amount of \$93,740.07, together with interest at the legal rate accruing from the dates of the respective invoices;

iii. On the Third Cause of Action in favor of plaintiff Medical Billing Resources, Inc. in the amount of \$93,740.07, together with interest at the legal rate accruing from the dates of the respective invoices;

iv. On the Fourth Cause of Action in favor of plaintiff eAppeals Commercial LLC in the amount of \$107,851.12, together with interest at the legal rate accruing from the dates of the respective invoices;

v. On the Fifth Cause of Action in favor of plaintiff eAppeals Commercial LLC in the amount of \$107,851.12, together with interest at the legal rate accruing from the dates of the respective invoices;

vi. On the Sixth Cause of Action in favor of plaintiff eAppeals Commercial LLC in the amount of \$107,851.12, together with interest at the legal rate accruing from the dates of the respective invoices;

together with the costs of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
May 9, 2008

**EDWARD F. WESTFIELD, P.C.**

Attorney for Plaintiffs

*s/ Edward F. Westfield*

By: \_\_\_\_\_

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